IN THE

Supreme Court of the United States.

OCTOBER TERM, 1900.

A. L. GUSMAN, in behalf of SAMUEL WRIGHT, *Appellant*,
vs.
L. H. MARRERO, Sheriff, &c.
} No. 223.

STATEMENT OF FACTS.

In December, 1899, Samuel Wright was indicted by a grand jury of the Twenty-First Judicial District Court for the parish of Jefferson, for the crime of assault with intent to rape, and upon trial was convicted and sentenced to be hanged. He was committed to the custody of the sheriff, Marrero, and the governor fixed February 9, 1900, as the day of his execution (Rec. 5).

The petitioner, Gusman, petitions the Circuit Court of the United States for the Eastern District of Louisiana, averring that Wright was held in illegal custody, and praying that he be discharged (Rec. 1). The sheriff appeared and excepted to the petition on the grounds: *first*, that the court was without jurisdiction; and, *second*, that no cause of action was shown (Rec. 5).

The causes shown to establish the illegality of the custody are set out in detail in the petition, and are in brief that the constitution of 1898 of Louisiana is invalid, and that the grand jury that indicted Wright was illegally constituted, consisting as it did of but twelve members, the

Constitution of 1879 providing for grand juries of not less than sixteen members.

The court below sustained both exceptions and dismissed the petition (Rec. 6).

Assignment of Errors.

1. The Court erred in holding that it was without jurisdiction to hear the petition.

2. The Court erred in holding that the petition showed no ground for discharge of the prisoner.

Argument.

The Statute of 1896, passed in pursuance of the Constitution of Louisiana, adopted in 1879, requires that a grand jury shall consist of not less than sixteen members.

Acts of Gen. Assembly, 1896, Art. 99, Sec. 6.

This provision is one of substance, for the protection of accused persons, and may not be ignored or avoided.

Thompson *vs.* Utah, 170 U. S., 343.

But Wright was condemned under an indictment found by a grand jury of but twelve members, and was thus denied due process of law.

Question of Jurisdiction.

Before we proceed to discuss the merits of the case, there is an exception for want of jurisdiction in the United States Court, filed by the defendant, which must be met and considered. Judge Parlange overruled the exception, and that in so doing he did not err there can be no doubt. We went to the United States Circuit Court for protection and relief for the very substantial reason that we had no other court to go to. Our plea of the invalidity of the Constitution of 1898 absolutely precluded our entrance into any

of the State courts, because of the well-settled principle of constitutional law, that State courts are incompetent to pass upon the validity of the constitution under which they themselves exist, and from which they derive all their powers. This principle was enunciated by this Court more than half a century ago, and the Supreme Court of Iowa has since ruled to the same effect. From these decisions we present the following extracts:

7th How, p. 39; Luther *vs.* Borden.

"Indeed we do not see how the question could be tried and judicially decided in the State court. Judicial power presupposes an established government, capable of enacting laws and enforcing their execution, and appointing judges to expound and administer them. The acceptance of the judicial office is a recognition of the authority of the government from which it is derived, and if the authority of that government is annulled and overthrown, the power of its courts and their officers is annulled with it, and if a State should enter upon the inquiry proposed in this case, and should come to the conclusion that the government under which it acted had been put aside and displaced by an opposing government, it would cease to be a court, and be incapable of pronouncing a judicial decision upon the question which it undertook to try. If it decides at all as a court, it necessarily affirms the existence and the authority of the government under which it is exercising judicial power; if the State government has no legal existence, then the laws passed by its legislature during this time are illegal and nullities; the taxes collected wrongfully collected; the salaries and compensations paid to its officers illegally paid; its settled public accounts improperly settled, and the judgments and *sentences* of its courts in civil and criminal cases *null and void*, and the officers who carried these decisions into operation answerable as trespassers."

60th Iowa, p. 608; Koehler case.

"A court which, under these circumstances, should enter upon the inquiry as to the existence of the constitution under which it was acting, would be like a man trying to

prove his personal existence, and would be obliged to assume the very point before taking the first step in the argument."

But again, and better still, we are here furthermore under an absolute right of action, because of the nature and character of our case, for—Brightley's digest, Vol. 1, p. 434—

"The United States Circuit Courts have original jurisdiction of all cases to redress the deprivation, under color of any law, statute, ordinance, regulation or usage, of any right, privilege or immunity secured by the United States Constitution."

In further support of the claim, see the following recent decisions:

139 U. S. 462; Leper *vs.* Texas.
159 U. S. 34; Scott *vs.* McNeil.
166 U. S. 226; Chicago Railway Co. *vs.* Chicago.
169 U. S. 382; Holden *vs.* Hardy.

It matters not that in this case political questions of consequence and State issues and laws are more or less directly and indirectly, involved, for they are mere incidents and divisions of our cause, and therefore do not affect the jurisdiction of this Court.

Worcester *vs.* Georgia, 6 Pet., 515.
Rhode Island *vs.* Mass., 12 Pet., 619.

This Court, in both cases cited, maintained the jurisdiction claimed, exercised it, and rendered definitive judgments. In Worcester *vs.* Georgia, the court ordered the release of Worcester.

On the Merits.

The Constitution of 1898 was and is invalid, because the convention that framed it was without right, power or authority, by a simple ordinance of its own creation, to abrogate the Constitution of 1879, that had been adopted and

ratified by the people of Louisiana, and substitute therefor an instrument of its own, that had never been adopted nor ratified by the people of Louisiana ; the usurpation of the convention being made still more flagrant when accompanied by the historic fact that at the election held for the purpose of ascertaining whether a constitutional convention should be held, only 11 per cent. of the electors voted for convention, and less than 15 per cent. of the voters of Louisiana participated in the election.

As the above pleas present political questions, the solution of which belongs to Congress primarily, and not to the Judiciary, the pivotal controversy in this case is really one of history, rather than one of law, since our contention is that Congress, in 1868 and 1869, definitely settled, in the Virginia case, that the adoption and ratification by the people of a framed and formulated constitution are indispensable requirements to the establisment and maintenance of a republican form of government in a State, under the guarantee clause of the Federal Constitution, so that it is now incumbent upon the Judiciary to enforce the decision, whenever properly called upon to do so. Such an enforcement is what we ask on behalf of our client, and his existence, therefore, now entirely depends upon the fact whether we are correct as to the Virginia case. If we are, this Court should grant him protection and relief ; if we are not, an early death is his doom. The circuit judge virtually held that, as in 1847, in the Luther–Borden case of the 7th Howard, page 6, this Court had decided that Congress had not solved the question of indispensability, and as there were no later decisions on the subject, he did not consider it incumbent upon him to go outside the reports of this Court to decide whether the time and occasion had arrived for him to pursue a different course from that indicated by that decision. And from that ruling, on our application, he granted us an appeal to this Honorable Court. There are seven other pleas or counts in our petition, but they

were all abandoned in the Court *a qua*, and the fight for Wright's life made solely upon the plea of indispensability of adoption and ratification of the Constitution of 1898.

The so-called Constitution of 1898 is null and void, because it lacks the essential requisite of that adoption by the people of the State, required by the clause of the Federal Constitution, which provides that the United States shall guarantee to every State a republican form of government.

Whether the ratification of the constitution by the people of the State is an essential requisite, is a political question, the solution of which belongs exclusively to Congress.

When the Luther *vs.* Borden case (7th Howard), decided in 1847, was before this Court the question was still unsolved, so that this Court's refusal to assume jurisdiction was unquestionably correct. But the question having since then been affirmatively solved by Congress, it is now incumbent upon this Court to assume jurisdiction, and enforce the decision as far, and only as far, as our case is concerned. We base our request not only upon what was said in 1847 in the Luther-Borden case, but also upon your ruling in the Minor case (21 Wallace, 162). In that case this Court was confronted by the issue, whether or not the Missouri State Constitution, that denied to female citizens the right of suffrage, was republican in form, the direct political point presented being, as stated by Chief Justice Waite, whether or not suffrage was one of the fundamental, inherent rights and privileges of American citizenship. This Court found that this political question had been decided by Congress, and consequently assumed jurisdiction, but refused to enforce, the Congressional decision being a negative one, and therefore, not enforceable. As in our cause the reverse is true, and the plea we urge has become *res adjudicata*, we confidently claim an enforcement, and in further support of the claim we tender the following additional decisions :

21 Wall, 162; Minor *vs.* Happersett.

"The United States Constitution, in its requirement of a republican form of government, implies a duty on the part of the States themselves to provide *and maintain* a republican form of government."

Judge Cooley, in his work on constitutional limitations, section 196, emphasizes the necessity of such maintenance thus:

"Even in amending a State constitution it is possible for the people of the State to affect such changes as to deprive it of its republican character."

In the Luther–Borden case, 7th Howard, the following are the pertinent points decided:

1st. That, under the Constitution of the United States, it rests with Congress to decide which is the legal and validly established government of the State.

2d. That the question of validity is a political one in its nature, and therefore can only be definitively settled by the political power of the nation, Congress.

3d. That this is also true as to the validity of changes made in the fundamental law of the State.

4th. That the courts are incompetent to anticipate Congressional decisions upon political questions.

5th. That when Congress decides what are essentials and non-essentials as to the validity of changes made in the fundamental law of the State, the courts are bound to take notice of the decisions and to follow and enforce them, but not until then.

5 Blatchford, 12; U. S. *vs.* Baker.

"This branch of the defense involves considerations that do not belong to the courts of the country. It involves the determination of public and political questions, which belong to the departments of our government which have charge of our foreign relations—the legislative and executive departments. When these questions are decided

by these departments the courts follow the decisions, but not until then."

13 Wall., 646; White *vs.* Hart.

"The State is estopped. The action of Congress upon the subject cannot be inquired into. The case is clearly one in which the judicial is bound to follow the action of the political department of the case and is concluded by it."

See also 137 U. S., 202; Jones *vs.* U. S.

And now for the Virginia case; our case in point.

The Congress of 1867 and 1868 passed three very important laws, now historically known as the Reconstruction Acts, the first of which provides that the Act of March 2, 1867, to provide a "more efficient government of the rebel States," was to be effective only "until loyal and republican governments can be legally established." Another act, and the most important of the three, provided for the readmission of ten specified rebel States to the Union, through constitutional conventions, upon the following fundamental conditions precedent:

1st. That the constitutions framed by these conventions must be republican in form.

2d. That the instruments should abolish and forever prohibit human slavery and should recognize the supremacy of the Federal Constitution and of all laws and treaties made thereunder.

3d. That these constitutions should be adopted by a direct vote of the people of the specified States.

These were all fundamental conditions as to readmission, so that another condition expressed in the act, that the first legislatures elected under those constitutions should ratify the 14th amendment before the several specified States should be entitled once more to Congressional representation has, very evidently, nothing to do with the subject of readmission, and can, therefore, be safely omitted from further consideration.

The first of the specified States to apply for readmission was Arkansas, and on June 20, 1868, the necessary act of Congress became a law, its *raison a etre* being, as expressed in its preamble, that the people of Arkansas had "framed and *adopted* a constitution of a State government which is republican."

This act, on June 25, 1868, was followed by an act readmitting conjointedly North and South Carolina, Louisiana, Georgia, Alabama and Florida, its *raison d'etre* being practically the same as that of the Arkansas act, and is thus stated: "That the people of said States have framed constitutions of State governments which arere publican, and have adopted said constitutions by large majorities of the votes cast at the elections held for the ratification or rejection of the same." Two of the specified States, Mississippi and Texas, did not apply, for the very substantial reason that the constitutions framed by their conventions, when submitted to the people, were not adopted, but rejected. Virginia, the tenth State, did apply, but, after considerable discussion in both Senate and House of Representatives, she was denied admission by a large majority in both bodies, because her constitution had not been adopted by the people of the State. A strong plea for the condonement of the nonsubmission of the instrument to the people for ratification or rejection, was presented but not accepted, Congress deciding that no plea in equity, however strong, could override a fundamental condition precedent. That the plea was nevertheless strong and reasonable, is plainly shown by the following extracts from a long, masterly and eloquent speech of Senator Roscoe Conkling, of New York, delivered in Virginia's behalf:

"Section 5 of the Act of March 23, 1867, in express terms plights the nation's faith in this regard, to recognize the State of Virginia and to restore her to representation, and recites the events upon which alone the restoration of Virginia shall depend. It was said yesterday that Virginia

had failed to avail herself of this section, and that we were therefore to dismiss it from consideration. This I deny. The operation of the section has never been interrupted by Virginia. The State framed a constitution December 6, 1867, and Congress required it to be ratified by the people, and prescribed the qualifications of voters and mode of election. The Commanding General was to conduct the election, and the Commanding General, for want of funds, did not do so. The Senate surely cannot have forgotten that General Schofield, the Commandant, reported that he had omitted to hold an election for the reason that funds had not been furnished (not by Virginia, for she was not to furnish them, but by the United States), therefore it was that Virginia, without fault of hers, was denied the right to ratify her constitution with the seven other States, which, like Virginia, had been engaged in the rebellion. Section 4 of the Act of March 23, of 1867, directed that the convention of Virginia should fix the time of holding the election at which the constitution should be submitted, and should fix the time not less than thirty days after date of notice. The day was fixed by the convention. It was the second day in June, 1868. The day came and passed, and no election was held or authorized, the officers of the United States being alone competent to authorize or hold it. * * * Thus the Act of March 23, 1867, still stands, and speaks of Virginia and for Virginia, with all the intendments and faith to be found in Section 5. The condition upon which Virginia's rights depend, have, therefore, all been complied with, some of them more literally by Virginia than by several other States, whose restoration is now complete."

To right the wrong done Virginia, a remedial act, providing for an election for the adoption or rejection of her constitution, was passed by Congress, and the necessary funds appropriated. On July 6, 1869, the election was held, and the constitution was adopted by a vote of 210,568 to 9,136, and on October 19, 1869, Virginia was readmitted into the Union, without the addition, subtraction or change of a single word or letter of her constitution as it stood

when the previous Congress had rejected her application. These cold facts, brought out by the absence in Virginia's case of a subsequent ratification, when she made her first and unsuccessful application, we urgently urge and claim proved conclusively and emphatically that our people and nation are now firmly wedded to the great cardinal principle of Republicanism, that an ultimate exercise of sovereignty by the people is indispensably necessary for the enactment and maintenance of the fundamental law of each and every State of the Union. This conclusion has now been in strict practice for over 31 years, and since the settlement of the Virginia case no less than eight States (Colorado, Washington, Idaho, Montana, Wyoming, N. Dakota, S. Dakota and Utah) have been admitted into the Union under acts predicated upon the fundamental fact that the people of those States had both framed and *adopted* constitutions which are republican in form. In support of the applicability of this long continued Congressional practice to the *res adjudicata* character of the Virginia case, we tender the following valuable authorities:

1st Cranch, p. 299; Stuart *vs.* Laird:

"A contemporary exposition of the constitution, proposed and acquiesced in for a period of years fixes its construction."

"In this case, a rule acquiesced in for a period of several years (12 years), commencing with the organization of our judicial system, affords an irresistible answer, and has fixed the construction. This practical exposition is too strong to be shaken. The question is at rest, and ought not to be disturbed."

6th Wheaton, 418; Cohen *vs.* Virginia.

"Great weight must always be attached to contemporaneous expositions."

Lawyers' Reports Annotated, Vol. 41, 337, and Vol. 44, 679:

"Construction of the constitution by usage and long exercise of power are admissible."

146 U. S., p. 1; McPherson *vs.* Blacker.

"By the construction placed on the Federal Constitution for many years, the State Legislature had plenary power to pass the impeached statute."

In passing upon the Virginia case, we beg this Court to take into serious consideration two very important facts, to wit:

1st. That Senator Lyman Trumbull, who made a very logical argument against Virginia's plea in equity, stated that "The great object of the Reconstruction Acts is to have governments FORMED *in accordance with the Constitution of the United States*, and that had Virginia done as Alabama, Arkansas, Florida, Georgia, Louisiana and North and South Carolina have done (*adopted* her constitution), she would, like them, to-day stand here as a State with all the rights of a State.

"2d. That, as clearly outlined in the debates, proceedings and votes of Congress, the southern States were reconstructed upon somewhat different theories and constructions than were formally accepted in the admission of States; that the plan of reconstruction was a national and American plan, and not a Southern nor States' right plan; that it was held that the time had come when it had been decided by the American people that we were no longer to have two scores or more of different governments, each legislating for itself, and oftentimes in contrary directions, upon innate principles and the inherent rights of men; but, on the contrary, there shall be but one arbiter and Supreme Judge, and that this arbiter and judge shall be the people of the United States, acting through their Senators and Representatives in Congress."

The following extract, from a long speech of Senator

Oliver P. Morton, of Indiana, will further illustrate the broad scope and intendment of the reconstruction acts:—

"I believe the right to reconstruct implies the right to protect the reconstructed. If after a State government has been reconstructed, the State has the right to knock this government down, and we have no right to prevent it from doing so, but simply the right to set this government up again, then our powers are very imperfect. The power to do what we have done, logically implies the power to protect what we have done, and I shall hold to that doctrine in the case of Tennessee, if she goes far enough to clearly violate the terms of her reconstruction as to deny the security of life and property to those who have been enfranchised, and to violate those conditions which we have prescribed *as essential* to a republican form of government. Those States should understand that when they have been reconstructed and readmitted, they are not even then beyond our power; that they are not at liberty to do over what they have done and impair the security they have given, but that we shall require, *in the future*, as we do now, that the security shall be preserved unimpaired."

We next beg the Court's attention to the following valuable authority; 169 U. S. 366; Holden case:—

"The power of change of the State is limited to the fundamental principles laid down in the Constitution, to which each member of the Union was bound to accede as a condition of its admission as a State."

In its act of readmission Louisiana acceded to the fundamental principle of the Federal Constitution, that every State Constitution, in order to either establish or maintain a republican form of government, must be both framed *and adopted* by the people of the State; therefore the constitutional convention of 1898, in placing in existence and force the instrument it formulated and framed, without an essential previous adoption by the people, was guilty of a breach of the pledge given in the act of reconstruction, with a resulting deed of criminal and treasonable usurpa-

tion; hence, because of this usurpation, the so-called constitution of 1898 is clearly an invalid instrument, and the constitution of 1879, *a ratified and adopted constitution*, is still the fundamental law of Louisiana.

Louisiana historically stands pledged to the fundamental principle of the indispensibility of an adoption by the people, all of her previous constitutions, five in number, having received the assent of the people before they were put into force and effect. And to darken matters, it is now well known that the convention of 1898 made this first departure from the well established rule, because of well-grounded fears of the members, that if their constitution was submitted to the people, it would fail to secure, even from a terribly reduced electorate, a majority vote. And secondly, Louisiana is furthermore judicially pledged to this great constitutional principle, her Supreme Court having held (33 La. Annual, 588, Hart case), that in order to maintain a republican form of government, to all material constitutional changes "the people's assent must be obtained *by the direct voice of the people*, in whom the State's sovereignty resides, and by whom alone it can be announced and expressed."

Furthermore, the Constitution of Louisiana of 1879, Article 1, provides that "All governments of right originate with the people; is founded on their will alone, and is instituted for the good of the whole, deriving its just powers *from the consent of the governed.*"

And Louisiana is by no means the only State that has judicially bound itself to the doctrine of essentiality of adoption by the people. The question has been passed upon by the Supreme Courts of other States, and all have ruled that a subsequent ratification is indispensible, as will be seen from the following cullings from their decisions:

3 Minn., 240; Parker *vs.* Smith:—

"A constitution is not operative until its adoption by the people, and does not change any rights or duties until

it has received such sanction." Reaffirmed in 29 Minn., 555, Secombe *vs.* Kitterson.

7 Md., 135:—

"The constitution owes its whole force and authority to its ratification by the people." Reaffirmed in 28 Md., 269, Smith *vs.* Thursby.

76 Ills., 34; Beardstown *vs.* Virginia:—

"The constitution does not derive its force from the convention which framed it, but from the people who ratified it."

75 Pa. St., 37; Wells *vs.* Bain:—

"The convention is not a co-ordinate branch of the government. It exercises no governmental powers, but is a body raised by law, by the popular desire to discuss and propose amendments, which have no governing force so long as they remain propositions. While it acts within the scope of its delegated powers it is not amenable for its acts, but when it assumes to legislate, and to repeal and replace existing institutions before they are displaced by the adoption by the people of its propositions, it acts without authority and the citizens injured thereby are entitled, under our declarations of rights, to an open court and to redress at our hands."

75 Pa. St., 59; Woods Appeal:—

"The constitutional convention cannot take from the people the sovereign right to ratify or reject the constitution or ordinance framed by it, and cannot infuse life or vigor into its work before ratification by the people."

44 N. Y., 435; People *vs.* N. Y. Central Railway Co:—

"A constitution is an instrument of government, made and *adopted* by the people for practical purposes connected with the common business and wants of human life."

This decision is predicated upon two preceding decisions of the same court, to wit, 7th N. Y., 93, and 2d Hill, 31.

33 S. E. Rep., 139; State *vs.* Jordan, a North Carolina case:—

"The people exercise the legislative powers supremely through constitutional conventions, and by ratification upon a direct referendum to themselves."

There are, likewise, decisions equally strong from the Supreme Courts of Virginia, Massachusetts, South Carolina and New Jersey—in fact, two from South Carolina.

Against this powerful array of State decisions the supporters of the anomaly, absurdity and heresy of conventional sovereignty present only an *obiter dictum* of the Supreme Court of Missouri, and another from the Supreme Court of Texas. As these so-called decisions are not decisions, but mere opinions, they fall far below the dignity and worth of decisions, and hence amount to nothing, and are unworthy of consideration. And, secondly, our judicial heretics present additionally two so-called decisions of the Supreme Court of Mississippi, and one from that of South Carolina, all of which are absolutely null and void, and worthless, inasmuch as they were rendered in defiance of the well settled principle of constitutional law, that state Courts are incompetent to pass upon the validity of the constitution to which they owe their existence and from which they derive all their powers, hence Louisiana's *fin de siecle* devotees to an absurd fallacy as to constitutional conventions have not a single prop upon which to base a reasonable plea for the salvation of their constitution of 1898 from a well merited death sentence, because of the absence of its ratification and adoption by the people of the State.

The wisdom and necessity of a subsequent ratification was well illustrated in Illinois some eleven years ago. The people of the State voted largely in favor of a constitutional convention, and subsequently elected delegates thereto. These met, framed a new constitution, and submitted it to the people for adoption or rejection. By an overwhelming majority *it was rejected.* Had the convention simply placed the instrument into force and effect, without submission, it

would, as shown by the election, thereby have been guilty of the tyranny and crime of imposing upon the governed, and against the will of the people of Illinois, a repugnant instrument, and thus violated the basic principle of a republican form of government, that the fundamental law of the State must rest upon the consent and assent of the governed.

In 1862 a similar occurrence had happened in Illinois, a framed and formulated Constitution, when presented to the people of the State for ratification or rejection, having been rejected by a decisive majority of the voters of the State. And to other States the following rejections are to be credited. To Rhode Island a proposed constitution voted down in 1824; to Wisconsin a constitution voted down by the people of the State in 1846; and to New York and Michigan, constitutions rejected by the people in 1867.

We further submit that an adoption by the people is an indispensable condition precedent to a republican form of government, and such great writers upon our National Constitution and Constitutional laws as Jameson, Cooley, Story, Bryce and Black, all concur in declaring that such a condition precedent is an essential requisite. The following brief extracts will show that this statement is correct:—

From "Jameson's Constitutional Conventions:"

SEC. 11.—"A constitutional convention never supplants the existing organization. It never governs. Though called to look into and recommend improvements in the fundamental laws, it enacts neither these nor statute laws. * * * Members of the constitutional convention are not representatives but delegates, and as delegates their function is not to enact, but to frame and recommend."

SEC. 334.—"The normal conception of a constitutional convention is that of a body, appointed by the sovereign, the people, to mature a scheme of fundamental law to be submitted to that sovereign for ratification or rejection. * * * It is bound to submit to the people the fruit of its deliberations for approval or disapproval."

Cooley's "Constitutional Limitations," sec. 32 :—

"No body of representatives, unless specially clothed with that power by the people when choosing them, can rightfully take definitive action upon the amendments or revisions. They must submit the result of their deliberations to the people, who *alone* are competent to exercise the powers of sovereignty in framing the fundamental law, for ratification or rejection. The constitutional convention is the representative of sovereignty in a very qualified sense, and for specific purpose, and with restricted authority, to put into proper form the questions of amendment or revision, upon which the people are to pass, but the changes in the fundamental law of the State *must be enacted by the people themselves.*"

From Bryce's "American Commonwealth," Vol. I, p. 422:

"Analysis: A normal constitution consists of five parts:

"1st. Definition of boundaries.

"2d. Bill of rights.

"3d. Frame of government.

"4th. Law and Administration.

"5th. The schedule which contains provisions relating to the methods of *submitting the constitution to the vote of the people*, and arrangements for the transition from the previous constitution to the new one, which is to be *enacted by that vote.* Being of a temporary character, the schedule is not strictly a part of the constitution."

From the "American and English Encyclopædia of Law," Vol. III, p. 672:

"A constitutional convention cannot take from the people their sovereign right to ratify or reject the constitution framed by it, and cannot infuse life or vigor into its work, before ratification by the people of the State."

Substantially the same in Jameson's "Constitutional Conventions," secs. 415, 416, 417 and 418.

The foregoing decisions and authorities fully explode the plea of the supporters of the constitution of 1898, that the constitutional convention act of the Legislature of 1896 justifies the action of the convention in infusing life

and vigor into its work without a previous submission to and ratification by the people, because the people of the State, at the election provided by said act, authorized what the convention did. This is bosh, and unfounded in fact, ridiculous in its pretentions and null and void, were it not untrue. It is false because the act, neither in its body, nor in its title, which, under the constitution of 1879, controls the body, is any provision found for the delegation of the authority usurped by the convention, but on the contrary, instead of providing for an enhancement of the ordinary powers of a constitutional convention, they impose serious limitations to these ordinary powers, the body containing half a score or more of very material prohibitions, and the only vote demanded of the electors was, "for a convention of limited powers," or "against a constitutional convention," which gives no intimation or indication of the highly-enhanced power claimed by the convention, and exercised by it. The only authority for the usurpatory and revolutionary action of the convention came solely from the Legislature, that was entirely destitute of such power, and, of course, was incapable of conferring a valid grant of what it did not possess; and, furthermore, the essential intimation of such a grant in the title of the act is not embraced in the title, and this adds many pounds to the worthlessness of the claims of the upholders of the constitution of 1898.

Secondly, the justificatory claim in favor of the constitutional convention, in robbing the people of Louisiana of the privilege of their adopting or rejecting the instrument framed by that body, is palpably unreasonable since the adoption and ratification of a framed constitution, before that instrument is framed, is a material impossibility. A born constitution is as indispensably necessary to the ratification and adoption of that instrument as a born child is indispensably necessary to the christening and adoption of that child.

And thirdly, admitting for argument sake that the justi-

ficatory claims are sustained by facts such as are claimed to exist, the lack of an adoption by the people of the constitution as framed, would still remain a fatal defect, since the action of the convention would nevertheless still remain usurpatory, and revolutionary, and null and void, because still conflictive with and repugnant to the decision of Congress in the Virginia case, which is binding upon every State of the Union, and upon all the people of the United States, and which demands adoption *after* the constitution is framed, and not before it is framed. Here the legal maxim that "the law intends what is agreeable to reason, and does not suffer an absurdity" is very appropriate.

We now tender another valuable and appropriate feature.

By Article 5 of the constitution, a national constitutional convention can be called by Congress, when applied for by two-thirds of the States of the Union, but the work of such convention is limited to formulating and framing a constitution, the constitution furthermore providing for a subsequent ratification and adoption by two-thirds of the states before the instrument shall go into force and effect. This illustrates once more how firmly wedded our people are to the great cardinal principle of genuine republicanism, that an ultimate exercise of sovereignty by the people is essential for the valid enactment of all fundamental laws.

When this Article 5, of the National Constitution was under discussion in the constitutional convention of 1787, a move was made by some of the members to reject the provision of a subsequent ratification by the States. This was stubbornly resisted, Gov. Edmund Randolph, of Virginia (afterwards one of the Attorney-Generals of Washington's Administration), leading the opposition, and closing a grand effort in behalf of popular sovereignty, with these thrilling words: "Conventional sovereignty is an anomally and absurdity. In a republic there can be, and ought to be, only one kind of sovereignty, that of the people."

When the vote was taken, the members of the conven-

tion evidenced their appreciation of Gov. Randolph's oration by killing the proposed amendment by a majority of more than three to one.

A few words as to an important fact as to previous occurrences will add greatly to the value of Gov. Randolph's success.

As well known by all persons familiar with the history of Virginia, to that State belongs the honor of having elected the first delegation to the constitutional convention of 1887. Soon after their election these delegates met for consultation, and after electing George Washington for their chairman, they afterwards, among other things, selected James Madison to "prepare the outlines of a constitution to serve as a basis for their future actions." Madison promptly executed the work entrusted to him, and submitted it to the delegation, by which it was endorsed. Now, we have his declaration that in his labors he was guided, from first to last, "With the fixed principle that the new system should be *ratified by the people* of the several States."

Shortly after the organization of the convention Governor Randolph, who had been persuaded by Madison to act as leader of the delegation, Washington having been elected president of the convention, and to take a foremost part in the convention, presented the plan to that body that received it so favorably that the document that soon became known as the "Virginia Plan," according to one of America's best historians, "served the convention as a chart for its voyage from this presentation on May 25, 1787, to the wished for haven, which was reached when that body had framed the constitution and adjourned, and left its adoption and ratification to the people of the States."

Curtis' "Constitution of the United States," Vol. II, book 4, p. 482:—

"In the National Convention it was universally acknowledged that the people of the States were the fountain of all political power."

Curtis' "Constitution of the United States," Vol. II, book 4, p. 472:—

"By the guarantee clause of the constitution for a republican form of government, it became one of the essential characteristics of the guarantee that no other form of government should be permitted by Congress to be established by a State."

By the Louisiana Constitution of 1898 a large majority of the legal voters of the State have been, through the anomally of conventional sovereignty, eliminated from the electorate of the State, and over 190,000 native-born Americans placed in the thralls of political bondage, and made aliens in the land of their nativity and exiles in their own homes. All essential vestiges of a republican form of government are ruthlessly banished from its portals, and the abomination and putridity of English oligarchy substituted therefor.

By the United States Constitution, and in consonance with the ruling of the United States Supreme Court in 16 Wallace, p. 162, every American citizen is made the lucky and enviable possessor of a membership in our nation, but by the constitution of Louisiana this membership, as regards a majority of the American citizens of that State, has been made practically worthless, and an object more of humiliation than one of pride and exaltation.

By the United States Constitution, as held by the United States Supreme Court in 16 Wallace p. 36, American citizenship is constitutionally the primary citizenship everywhere throughout our nation, and State citizenship only and merely a secondary and derivative citizenship, but for Louisiana the constitution of that State has inverted this order, and to-day, in that State, State citizenship is the

primary and superior citizenship, whilst American citizenship has been debased and degraded so low that about the utmost that can be reasonably said of it is that it is, in Louisiana, a mere incident, practically valueless.

Furthermore, the constitution of Louisiana repudiates all the fundamental principles of the Declaration of Independence, and antagonizes all the essentials to a republican form of government, judicially recognized and approved by the United States Supreme Court since the readmission of that State. Equality is not one of its characteristics, but on the contrary it rests upon racial intolerance, partisan greed, educational tests, money exemptions and property preferences, and reveals throughout its length and breadth a transparent, disloyal and treasonable purpose to nullify two very important articles of the Federal Constitution. Privileges and immunities to classes and races are its main and controlling features, and this makes it a government of the few, with the indelible stamps of both English oligarchy and German imperialism, and it is therefore, the very antipodes of a republican form of government.

In conclusion, an absolute indispensability of ratification by the people is the visual point at which all the horizontal lines of our authorities unite in a common effort to sustain our rights to relief and redress, and as the State courts cannot act, this common effort, we hope, may prove a sufficient power to secure us from this honorable Court the grant of our prayer, that our client, Samuel Wright, be set at liberty.

Respectfully submitted,

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